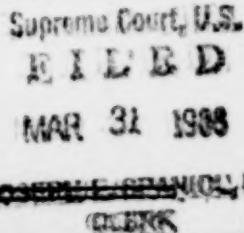


No. 87-920



In The
Supreme Court of the United States
October Term, 1987

NATALIE MEYER, in her official capacity as Colorado
Secretary of State, and
DUANE WOODARD, in his official capacity as Colorado
Attorney General,

Appellants,

vs.

PAUL K. GRANT, EDWARD HOSKINS, NANCY P.
BIGBEE, LORI A. MASSIE, RALPH R. HARRISON,
COLORADANS FOR FREE ENTERPRISE, INC., a
Colorado corporation,

Appellees.

**ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT**

BRIEF OF APPELLEES

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QUESTION PRESENTED

Does that portion of Colo. Rev. Stat. Sec. 1-40-110, which prohibits payment to circulators of petitions violate the Appellees' rights to freedom of speech and political association guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States?

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The Plaintiffs-Appellees, Paul K. Grant, et al., submit this Brief.

STATEMENT OF THE CASE

The Appellees were proponents of a proposed initiative to amend the Constitution of the State of Colorado to eliminate the authority of the Public Utilities Commission to regulate motor carriers.¹ The Appellees needed at least 46,737 signatures of registered voters before August 6, 1984 in order for the initiative to be placed on the November 1984 ballot (J.A. 14).

Because of difficulty in obtaining the required number of signatures, the Appellees wanted to be able to hire petition circulators. However, a Colorado statute made it a felony offense to pay someone to circulate a petition (C.R.S., § 1-40-116). The appellees, therefore, brought suit challenging the constitutionality of the statute.

The evidentiary record in this case is short. The entire transcript of the testimony appears in the Joint Appendix at pages 11 through 97. In addition, the trial court admitted six exhibits into evidence and admitted two other exhibits for limited purposes.^{2,3}

1. The petition (Plaintiffs' Ex. 1) appears at App. 74-9 of the Jurisdictional Statement.
2. Defendants' Exhibit G was admitted solely for the quotation from Mrs. Thomas. The quote appears in the transcript at JA96.
3. In the Brief for Appellants, the State cites seven articles in support of various "facts." These articles are listed on

(Continued on following page)

At trial, Mr. Grant and Ms. Massie testified that approaching strangers to obtain signatures is difficult and discouraging work (J.A. 37). They further testified that the most effective method of communicating with potential signors of the petitions was through the person who was carrying the petition (J.A. 41). Finally, they testified that the prohibition against paid petition circulators restricted the number of registered voters whom they could reach with their message (J.A. 19).

Mr. Grant gave the following testimony based upon his experience as a petition circulator:

[T]he way that we go about soliciting signatures is that you ask the person—first of all, you interrupt the person in their walk or whatever they are doing. You intrude upon them, "Are you a registered voter?"

Many people say, "I haven't got time, don't bother me," or "Yes, I am, but it is none of your business," or "Yes, I am, so what?"

If you get a yes, then you tell the purpose your purpose, that you are circulating a petition to qualify the issue on the ballot in November, and tell them what about, and they say, "Please let me know a little bit more." Typically, that takes maybe a minute or two, the process of explaining to the persons that you are trying to put the initiative on the ballot to exempt Colorado transportation from PUC regulations.

(Continued from previous page)

page V of the State's brief as "Other Authorities." None of these articles were admitted into evidence.

The appellees object to the introduction of this evidence into the record. The State has not requested this Court to take judicial notice of "adjudicative facts" pursuant to FRE 201. Furthermore, the State's brief contains few "legislative facts" pertaining to *Colorado* constitutional or legislative history.

Then you ask the person if they will sign your petition. If they hesitate, you try to come up with additional arguments to get them to sign. If they don't, you say, "Thanks, have a nice day." (J.A. 15-16)

According to Appellants' Exhibit E, twenty-four states have some form of initiative process. Of these, only Colorado, Nebraska and Washington prohibit paid circulators. The remainder of the states, (21), allow paid petition circulators.

SUMMARY OF ARGUMENT

The appellees wished to convince registered voters to sign their petition. The most effective way to reach and convince someone to sign the petition was through the petition circulator. By prohibiting the appellees from hiring petition circulators, the State of Colorado effectively limited the number of people which the appellees could reach with their message to sign the petition.

The issue in the case is not whether the initiative is a good or bad procedure. The issue is whether the appellee's First Amendment rights to free speech and political association have been violated.

The State of Colorado has advanced no governmental interest which justifies this restriction on the appellees' right of free speech and political association. The Tenth Circuit Court of Appeals, therefore, correctly held that the Colorado Statute is unconstitutional.

ARGUMENT

The Prohibition Against Paid Petition Circulators Limits The Quantity Of Speech

The statutory prohibition against payment to circulators of petitions limits the number of registered voters who can be reached with the message to sign the petition. The statute thus imposes restrictions on the First Amendment guarantee of freedom of speech and political association.

"The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957):

Whatever differences may exist about interpretation of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and form of government, the manner in which government is operated or should be operated, and all such matters relating to political processes.

Brown v. Hartlage, 456 U.S. 45, 52-53 (1982), (quoting *Mills v. Alabama*, 384 U.S. 214, 218-219 (1966)).

The proponents of an initiative may spend unlimited amounts on general newspaper, television or radio advertisements urging registered voters to sign a petition. However, the most effective form of communication is the personal contact by the petition circulator. As he approaches the registered voter, he explains his purpose, the merits of the initiative and the need to sign the peti-

tion. The number of voters who can be reached in this manner is limited because the proponents of the initiative cannot pay people to directly communicate the message.

This case concerns a limitation upon campaign expenditures in support of ballot issues. The United States Supreme Court has previously declared that limitations on expenditures in any type of election (candidate or ballot) violate the First Amendment right to free speech and political association. *Buckley v. Valeo*, 424 U.S. 1 (1976). *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981). Concerning ballot measures, the United States Supreme Court has previously declared unconstitutional restrictions on contributions and expenditures. *First National Bank of Boston v. Bellotti*, *supra*. *Citizens Against Rent Control v. Berkeley*, *supra*. Only in a limited area of contributions to candidates has the United States Supreme Court sustained restrictions on campaign finances. *Federal Election Commission v. National Conservative Political Action Committee, et al.*, 470 U.S. 480 (1985).

Furthermore, three different Federal District Courts from other circuits have declared identical prohibitions on paid solicitors to be unconstitutional under the First Amendment. The pertinent decisions from other courts including the three U.S. District Court cases are:

State v. Conifer Enterprises, Inc., 82 Wash. 2d 94 508 P2d 149 (1973). Washington Supreme Court held that a Washington Statute prohibiting payment to petition circulators did not violate the First Amendment. *This case was decided before Buckley v. Valeo*.

Hardie v. Fong Eu, 556 P2d 301 (1976). California Supreme Court declared unconstitutional the limi-

tation on expenditures in connection with circulation of initiative petitions.

D.C. Committee on Legalized Gambling, et al. v. Carl S. Rauh, Civ. No. 79-3296 Dist. of Columbia, Dec. 21, 1979. (Unpublished opinion—copy attached to petition for rehearing before the Tenth Circuit.) United States District Court for the District of Columbia declared unconstitutional the prohibition on payment to circulators of initiative petitions.

Libertarian Party of Oregon v. Paulus, Civ. No. 82-521 F.R. (D. Ore., Sept. 3, 1982). (Unpublished opinion—copy attached to brief of appellant before the Tenth Circuit.) United States District Court for the District of Oregon declared unconstitutional the prohibition on payment to circulators of petitions.

Robin K. A. Ficker v. Montgomery County Board of Elections, et al., 670 F. Supp. 618 (D. Md. 1985). United States District Court for the District of Maryland declared unconstitutional the prohibition on payment to circulators of petitions.

The decisions of the United States Supreme Court and the case authority from other courts strongly support the en banc opinion of the Tenth Circuit.

The Petition Circulator Is Not A "Type Of Election Judge"

The State in its Brief argues that “(t)he petition circulator was envisioned as a type of election judge. See *Sturdy v. Hall*, 143 S.W. 2nd 547, 550 (Ark. 1940).” Brief of Appellant, p. 9.

This argument was not raised by the State before the trial court. Furthermore, the Arkansas case has no impact on Colorado law. There is nothing in the Colorado Constitution or Colorado Statutes which states that the petition circulator is a “type of election judge.” The evidence in the record establishes that the petition circulator is an advocate who attempts to convince someone to sign the petition. The petition circulator is not a passive official who merely receives the signature. Finally, even if the petition circulator were an election judge, there is no evidence in the record that a “volunteer” petition circulator would be a better “type of election judge” than a paid petition circulator. A paid work force may be more reliable and dependable than a “volunteer” work force.

The right of initiative is reserved to the people in the Constitution of the State of Colorado. (Article V, para. 1, Constitution of Colorado). The Colorado Constitution does not prohibit payment to petition circulators. Furthermore, it states that “(t)his section of the Constitution shall be in all respects self-executing.” Some thirty years later and in spite of the language in the Constitution that the initiative provision is self-executing, the legislature added by statute the requirement that petition circulators could not be paid. CRS 1-40-110.

The expressed purpose of the legislature, in enacting the statute was not to make it more difficult to obtain the required number of signatures and thereby decrease the number of initiatives which would be voted upon by the electorate. The expressed intent of the legislature was to “safeguard” the initiative process.

“It is not the intention of section 1-40-101 to 1-40-111 to limit or abridge in any manner the powers reserved

to the people in the initiative and referendum, but rather to properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government." C.R.S. § 1-40-111.

In their Constitution, the people of the State of Colorado granted to the general assembly the power to enact laws. However, the people *reserved* to themselves the right to enact laws and amend the Constitution directly through the initiative. Article V § 1 describes the power of the people to initiate laws as follows:

"The legislative power of the state shall be vested in the general assembly . . . but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly."

The people, not the legislature, are the ultimate source of power under the Constitution of the State of Colorado. "All political power is vested in and derived from the people. . . ." (Article II §1, Constitution of Colorado). "The people of this State have the sole and exclusive right of governing themselves. . . ." (Article II § 2, Constitution of Colorado).

Thus, the right to initiate legislation and amendments is not a power which has been granted to the people. "(I)t is not a grant to the people but a reservation by them for themselves." *McKee v. City of Louisville*, 200 Colo. 525, 616 P2d 969, 972 (1980).

The provision in the Colorado Constitution providing for the initiative states that it shall be "self-executing".

"This section of the constitution shall be in all respects self-executing; except that the form of the

initiative or referendum petition may be prescribed pursuant to law." Article V §1 (10), Constitution of Colorado.

Since the Constitutional provision is "self-executing", the general assembly of Colorado may enact provisions regarding the initiative only "so long as it does not diminish their rights . . ." *In re Interrogatories Concerning H. B. 1078*, 189 Colo. 1, 8; 536 P2d 308, 314 (1975). Legislation which affects the initiative "must further the purpose of the right or facilitate its operation." *City of Glendale v. Buchanan* 195 Colo. 267, 272; 578 P2d 221, 224 (1978).

"It is well established in this State that the Legislature may not impose restrictions which limit in any way the right of the people to initiate proposed laws and amendments except as those limitations are provided in the constitution itself. *Colorado Project—Common Cause v. Anderson*, 177 Colo. 402, 404; 495 P2d 218, 219 (1972).

Since C.R.S. 1-40-110 restricts Appellees' First Amendment rights, it may be upheld only if it passes "exacting scrutiny". "Especially where, as here, . . . the speech is intimately related to the process of governing . . ." *Bellotti* at 786. See also *Berkeley* at 294 ('regulation of First Amendment rights is always subject to exacting judicial review.'')

"(T)he state may prevail only upon showing a subordinating interest which is compelling. . . and the burden is on the government to show the existence of such an interest." *Bellotti* at 786.

The petition circulator in Colorado is not "a type of election judge." He is an advocate who attempts to con-

vince someone to sign the petition. However, even if he were "a type of election judge," there is no evidence that the subject statute promotes that interest.

The State's Asserted Interest In Preventing "Padded" Petitions Does Not Justify This Statute

The state argues that the statute "serves the compelling interest of protecting the integrity of the process by eliminating the incentive to pad petitions and by removing the appearance of corruption." Brief for Appellants, p. 7.

It would be helpful if the State would say directly what it means. Does "pad(ed) petitions" mean petitions which contain forged signatures? Does "eliminating the incentive" mean that paid petition circulators are more likely to forge signatures than "volunteer" petition circulators? Before the trial court, the State specifically stated that the purpose of the Statute was not to prevent forged signatures.

However, assuming that the State now argues that prohibiting paid petition circulators promotes a governmental interest in eliminating forged signatures, the evidence does not support that conclusion. Furthermore, there is no evidence in the record (nor was it argued by the State in the trial court) that the public believes that signatures gathered by paid circulators will contain a high number of forged signatures.

The United States Supreme Court has held that the only State interests which justify restrictions on campaign finances are corruption or the appearance of corruption and this holding has been applied only in cases related to candidate elections.

"We held in *Buckley* and reaffirmed in *Citizens Against Rent Control* that preventing corruption or the appearance of corruption are the only legitimate and compelling interests thus far identified for restricting campaign finances." *Federal Election Commission v. National Conservative Political Action Committee* 470 U.S. 480, 496-7 105 S.Ct. 1459, 1468 (1985).

However, as to campaign expenditures, the United States Supreme Court has bound no governmental interest sufficient to justify limitation on expenditures.

"No governmental interest that been suggested is sufficient to justify the restriction on the quantity of political expression imposed by § 608 (c)'s campaign expenditure limitation." *Buckley v. Valeo*, 424 U.S. 1, 56; 96 S. Ct. 612, 652 (1976).

The State of Colorado has an interest in ensuring that the signatures on the petitions are valid. The State also has an interest in ensuring that someone does not sign the petition as the result of a false or misleading statement by the petition circulator.

However, does the prohibition against paid petition circulators further this State interest? Are paid petition circulators more likely than unpaid circulators to forge signatures or to make false or misleading statements? There is no evidence in the record to suggest this conclusion.

Witnesses for the Appellees testified that money motivates people to work. See also *Urevich v. Woodard*, 667 P.2d 760, 763 (Colo. 1983) ("We can take judicial notice of the fact that it is often more difficult to get people to work without compensation than it is to get them to work for pay."). Witnesses for the Appellees also testified

that soliciting signatures can be discouraging work. However, there is no evidence that money in and of itself is such a motivating factor that people are willing to violate the law in order to earn the money.

Indeed, the two witnesses for the State both testified that being paid would not cause them to violate a law.

Q Now, in exercising your duties, you are a law abiding citizen and you don't violate the law, is that correct?

A That is correct.

Q Now, does the fact that you are paid for your work, in any way cause you to violate the law?

A I know of no way, that being paid causes me to violate the law. (Testimony of B. Chronic J.A. 57)

* * *

Q Do you attempt in your everyday life to obey the laws?

A As much as possible.

Q Why do you obey the laws?

A Because they are there.

Q If someone paid you to violate the law, would you violate it?

A I can't think of anything that would make me do that. (Testimony of S. Thomas J.A. 92-3.)

Petition solicitors who "voluntarily" contribute their time to obtain signatures are also motivated to obtain signatures. Because the organization which is promoting the initiative has less control over "volunteers" as opposed to "paid" solicitors, the inference may be drawn

that "volunteers" are more likely to forge signatures or make false or misleading statements. In an analogous case, the United States Supreme Court stated:

Note 13. "Indeed, solicitation by organizations employing paid solicitors carefully screened in advance may be even less of a threat to public safety than solicitations by organizations using volunteers." *Village of Schaumburg v. Citizens for a Better Environment, et al.*, 444 U.S. 620, 639, 100 S.Ct. 826, 837 (1980).

However, even if the statute does eliminate a temptation to pad petitions, the statute is constitutional only if there are not other more direct ways of dealing with the problem of "padded petitions". *Buckley v. Valeo* 424 U.S. at 45, 55-56. As stated previously, it is a felony offense in Colorado to forge a petition signature, (C.R.S., § 1-13-106). To make sure that the petition solicitor is aware of this offense, he must sign an affidavit with each petition specifically stating the genuineness of each signature, (C.R.S. § 1-40-106 (2)). By statute, in bold red ink on each petition must appear the following language:

WARNING:

IT IS AGAINST THE LAW:

"For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign such petition when not a registered elector." C.R.S., § 1-40-106 (1).

A statutory procedure exists for promptly challenging the validity of petition signatures, (C.R.S., § 1-40-109). Thus, even if the statute does eliminate the "incentive to pad petitions", the statute is nevertheless unconstitutional

because there are specific criminal offenses which directly attack the problem of "padded" petitions.

**Allowing Paid Petition Circulators
Would Have Assisted This
"Grassroots" Initiative**

The evidence at trial demonstrated that the plaintiffs-appellees were a "grassroots" movement to place an initiative on the ballot to deregulate motor carriers.⁴

The following excerpts from the testimony of Paul Grant and Lori Massie highlight the nature of the movement. Mr. Grant was the principal organizer of the effort. Ms. Massie was the fundraiser and petition coordinator.

Mr. Grant testified as follows:

"Q Mr. Grant, you are one of the plaintiffs engaged in this lawsuit, is that correct?

A Yes, I am.

Q In brief format, give us your background. Where did you go to college? What is your educational background and what is your occupation?

A I have two degrees in chemical engineering, a Bachelor's and a Master's, the Master's from the University of Maryland. Three years experience in the United States Army. My profession is working as a sales engi-

4. Webster's New Collegiate Dictionary, First Printing 1973 defines "grassroots" as "society at the local level esp. in rural areas as distinguished from the centers of political leadership." The appellees do not contend that they are a "rural" movement but do contend that they are otherwise within the definition of "grassroots."

neer. I sell process equipment to chemical and mine companies. I have been in sales for the last eight years.

I have also been active in political activities. I am (p. 6) the National Chairman of the Libertarian Party at this time, as well as Chairman of the Coloradans for Free Enterprise, one of plaintiffs in this case.

Q What is Coloradans for Free Enterprise?

A Coloradans for Free Enterprise is a non-partisan group founded in 1982 as a for-profit corporation, and its purpose was to promote free market solutions to problems here in the State of Colorado. (J.A. 11-12)

* * *

(p. 7) Q You mentioned by background and profession you are a chemical engineer. Does that professional background relate specifically to this proposal?

A Not in any way. (J.A. 13)

* * *

Q Would you describe just generally and rather briefly the process that you went by in order to get this petition in the position that it is in now?

A Well, the first time we did it, before drafting the initiative, was look for a group of people to support it, broad-based group of citizens, and we wanted their input in the drafting, so we had something which was acceptable to a large group of people.

(p. 8) We had involved in that process transportation attorneys, members of the transportation industry, mem-

bers of Coloradans for Free Enterprise, and members of the Colorado Legislature. (J.A. 13-14)

* * *

Q You mentioned there was a broad base of supporters for this. Would you identify by name and political parties some of the principals.

A Well, the primary supporters of this initiative who are listed on our letterhead as endorsers, I will go through as best (p. 9) I can from memory. Nancy Bigbee, a transportation attorney. State Representative Frank D. Philipo, a Republican from Jefferson County. State Senator Barbara Holme, a Democrat from Denver. State Senator Don McManus, Democrat from Adams County. State Representative Ruth Pendergast, Republican. State Representative Pete Menham from Colorado Springs. Bill Womack, a member of the RTD board. Bill Rourke, the Colorado Chapter of National Association of Independent Businesses. Patrick Lilly, Chairman of the Colorado Libertarian Party. Spencer Soame, head of Coloradans for Alternative Transit, and a few others on that letterhead whose names I don't recall.

Q In obtaining the petitions, could you describe what you have personally done. Have you actually gone out and asked people to sign a petition?

A In this case?

Q In this particular case.

A Yes, I have collected over 400 petition signatures as of today. (J.A. 14-15)

* * *

Q In a more serious vein, what have you tried to explain? (to convince someone to sign the petition).

A

* * *

We tried to convey the unfairness of the existing system, which has denied individuals the right to start their own businesses. In many cases, individuals have asked for an authority and been turned down because huge corporate organizations have opposed them.

* * *

(p. 12) And we, in conjunction, mention the fact that there have been repeated efforts to do similar work with deregulation through the Colorado Legislature, but those bills have been bottled up in committees, and heavy lobbying pressure, and lots of dollars have been spent in keeping those bills from reaching the floor. (J.A. 16-17)

* * *

Q All right, now, we are in court asking the Court to allow you to pay petition circulators. If this Court should grant our relief, what effect would that have on your petition drive?

A I think it would allow us to qualify our petition drive for the November ballot, if we were allowed to pay petitioners. (J.A. 19-20)

Ms. Massie gave the following testimony in pertinent part to illustrate that it was a "grassroots" effort and that paying petition circulators would assist that effort.

Q Are you involved in this effort to deregulate motor carriers in Colorado?

A Oh, yes, I am.

Q What involvement do you have?

A Well, I am in charge of the functioning of getting this thing on the ballot. Recruiting people for the ballot drive. I'm also responsible for raising money for the effort.

Q Are you being paid at all for your efforts?

A I get a percentage of what I raise.

Q As a practical matter, how much have you made?

A I was going to try to figure it. I think it comes to about a nickel an hour now. I have gotten \$529 over three months, and part of that is because I feel it is more important to get it on the ballot than to raise money, because—getting on the ballot means our success with it. (J.A. 38-39)

* * *

Q If you had a thousand dollars to spend on this deregulation of motor carriers, and you wanted to get the most signatures in effect for your thousand dollars, would you run a thousand dollars worth of ads, say the Rocky Mountain News, or would you spend a thousand dollars on petition circulators?

A I would put every penny of it in petition circulators.

Q Why is that?

A Because it is a direct way of reaching people, rather than having an ad in a paper that asks people to support us, and then somehow expect those people to go

out and find our circulators, wherever they may be. This is a direct way of having a one-on-one confrontation with an individual who wants to get it on the ballot, and a potential signer. Much more effective that way." (J.A. 41)

Allowing payment to petition circulators would have assisted this "grassroots" initiative effort. Unlike the "wine in grocery store" initiative which could rely upon the employees of the grocery stores to "volunteer" their time (J.A. 26), this group did not have a built in supply of "volunteers". The State in its brief has not argued that permitting payment to petition circulators will harm "grassroots" efforts in any way. Indeed, the evidence in this case shows that it will help "grassroots" efforts. It may also help businesses and other "special interests". However, that is a separate issue which is discussed immediately below.

The State's Asserted Interest In Eliminating Undue Influence Of "Special Interests" Does Not Justify This Statute

In *Buckley v. Valeo*, *supra*, the United States Supreme Court sustained statutory ceilings on contributions to political candidates. The Court reasoned that the appearance of corruption justified the limitation on free speech and political association, i.e. the perception of undue influence of large contributions to a candidate.

However, this rationale does not apply to initiative measures.

"Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections . . . is simply not present

in a popular vote on a public issue." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978).

The State in its brief implies that it has an interest in preventing those with wealth from having their initiatives placed on the ballot as a result of being able to hire paid solicitors.

Allowing solicitors to be paid may assist wealthy individuals, special interest groups and corporations to reach more registered voters and thereby obtain the required number of signatures. The state, however, does not have an interest in restricting expenditures by wealthy individuals or corporations on ballot issues.

"*Buckley* identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributors to a candidate..."

"... *Buckley* does not support limitations on contributions to committees formed to favor or oppose *ballot measures*." *Citizens Against Rent Control/Coalition For Fair Housing v. City of Berkeley, California*, 454 U.S. 290, 296-97 (1981). (Emphasis in original.)

Furthermore, "grassroots" campaigns which use only "volunteer" solicitors will not be harmed if other initiative campaigns are using paid solicitors. A registered voter may sign petitions on as many different issues as he wants.

"(T)he concept that government may restrict the speech of some elements of our society in order to

enhance the relative voice of others is wholly foreign to the First Amendment. . . ." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791 (1978). (Citation omitted.)

The State interest in having broad popular support for an initiative is protected by the number of signatures which are required to be obtained on the petition.

The Colorado constitutional provision requires petitions signed by registered voters constituting at least 5% of all those who voted for the office of the Secretary of State in the last general election, (Article V § 1, Constitution of Colorado). For the election involved in this case, 46,737 signatures of registered voters were required. Whether the signatures are obtained by "volunteers", by paid solicitors or by a combination of both, the State interest in broad public support is shown by the number of signatures. Furthermore, the petition circulator is merely involved in the first step of placing the issue on the ballot. Once on the ballot, the issue must receive a majority of the votes before it is enacted.

The Court should therefore reject the argument that the statute is necessary to insure broad-based support rather than just the support of corporations or wealthy special interest groups.

The State's Asserted Interest In Preventing Persuasive Speech Of Paid Petition Circulators Does Not Justify This Statute

The brief of the State implies that it has an interest in preventing paid petition circulators because they would

be more persuasive than a "volunteer" in convincing someone to sign a petition.

The State, however, does not have an interest in preventing persuasive speech.

"To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly the reason to suppress it: The Constitution 'protects expression which is eloquent no less than that which is unconvincing.'" *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978).

The use of false or misleading statements in obtaining the petition signatures is prohibited (C.R.S., § 1-40-119). Furthermore, the State interest in ensuring that someone knows what he is signing is protected by the *red bold-face* print which appears on each petition. Under the words "WARNING: IT IS AGAINST THE LAW" appears the following language as required by statute:

"Do not sign this petition unless you have read or had read to you the proposed initiative or referred measure or the summary of an initiated measure in its entirety and understand its meaning." C.R.S. § 1-40-106(1).

There is no evidence in the record that "paid" petition circulators would be more persuasive than "volunteer" petition circulators. However, even if they are more persuasive, the State does not have an interest in preventing persuasive speech. The governmental interest in having a petition signor know what he is signing is protected by the red, bold-faced print on the petition. The governmental interest in ensuring that there is reason-

able support for the measure is protected by requiring the signatures of 5% of the electorate. The State does not have an interest in preventing initiatives which have the required number of signatures from being placed on the ballot.

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CONCLUSION

C.R.S. 1-40-110 violates the rights of the Appellees to free speech and political association. The most effective method by which proponents of an initiative can reach registered electors with the message to sign the petition is through the petition circulator. The prohibition against paid petition solicitors limits the number of registered electors who can be reached.

The interests of the State of Colorado which the statute purportedly protects are not sufficiently important to justify the restrictions which the statute imposes on the communication of political issues. Other means are available and are presently being utilized to protect these other interests.

The interest of the State of Colorado, in preventing fraud, is met by specific statutes which make it unlawful to forge signatures, misrepresent initiatives, or pay a person for actually signing the petition. The State's interest in ensuring that there is a broad base of support before an initiative is placed upon the ballot is met by the State Constitutional requirement of obtaining the large number of required signatures.

The decisions of the United States Supreme Court firmly support the en banc opinion of the Tenth Circuit.

The United States Supreme Court has declared unconstitutional expenditure limitations on candidate campaigns. Concerning ballot issues, the United States Supreme Court has declared unconstitutional both expenditure and contribution limitations. The expenditure limitation in this ballot case should likewise be declared unconstitutional. The decision of the Tenth Circuit should therefore be affirmed.

Respectfully submitted,

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